IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

SAMMY GEORGE — PLAINTIFF

v. — No. 1:98cv148-D-D

CECIL SHELTON, in his individual capacity, and GRENADA COUNTY, MISSISSIPPI — DEFENDANTS

OPINION

Presently before the court is the Defendant Cecil Shelton's motion for dismissal under Rule 12(b)(6) or, in the alternative, summary judgment under Rule 56 of the Federal Rule of Civil Procedure. After considering the motion, the court finds that it should be granted. Therefore, the court shall dismiss the Plaintiff's claims against Mr. Shelton. This action shall proceed to trial against the lone remaining defendant, Grenada County, Mississippi.

Factual and Procedural Background

Mr. Shelton is one of the five elected members of the Board of Supervisors of Grenada County. The Plaintiff worked for the County for approximately eight years as a truck driver. In 1997, the County terminated the Plaintiff's employment, citing as reasons lack of work and inclement weather.

In 1993, the Plaintiff cooperated with the State Auditor's Office in an investigation by reporting that Mr. Shelton had unlawfully acquired steel from the County. As a result of the investigation, Mr. Shelton was required to pay the County for the steel. In a separate incident that year, Mr. Shelton asked the Plaintiff to state that the Plaintiff was the driver of a truck involved in an accident, when in fact the driver of the truck was not licensed to operate a County vehicle. In 1995, the Plaintiff reported to a state auditor that Mr. Shelton unlawfully acquired rock from the County. After the Plaintiff made these reports, Mr. Shelton showed animosity toward the Plaintiff in a number of ways, including calling the Plaintiff an obscenity which need not be repeated here.

Sometime around January 1997, the Board of Supervisors voted to terminate the

Plaintiff's employment. Mr. Shelton made the motion to terminate, and Mr. Shelton voted for termination. The termination was made effective January 1, 1997. The five members of the Board voted unanimously.

Claiming that his termination constituted retaliation for the exercise of his first amendment rights in the 1993 and 1995 reports to the State Auditor's Office, the Plaintiff filed the present action against Mr. Shelton and the County under the Civil Rights Act, codified at Title 42, section 1983 of the United States Code. On September 16, 1998, Mr. Shelton moved for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Since Mr. Shelton moved in the alternative for summary judgment under Rule 56, and the parties have submitted evidentiary materials in support of their positions, the court shall review this matter under Rule 56.

Summary Judgment Standard

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986) ("[T]he burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable

trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

Discussion

"It is well established that a public employee may not be discharged for exercising his or her right to free speech under the first amendment." Thompson v. City of Starkville, 901 F.2d 456, 460 (5th Cir. 1990). To prove a violation of this constitutional principle, a public employee must show that (1) his speech involved a matter of public concern; (2) his interest in commenting upon matters of public concern is greater than the defendant's interest in promoting the efficiency of the public services they perform; and (3) his speech motivated the defendants' decision to fire him. Thompson, 901 F.2d at 460.

In this case, the Plaintiff fails to present a genuine issue as to the third prong of the test stated Thompson. That is, no reasonable fact-finder could conclude that Mr. Shelton decided to fire the Plaintiff. To the contrary, it is clear from the evidence submitted to this court that it was the Board which decided to fire the Plaintiff. Certainly Mr. Shelton decided to recommend the Plaintiff's termination. When the Board met to vote on the issue, Mr. Shelton made the motion to fire the Plaintiff, and, in the subsequent vote, Mr. Shelton voted in favor of firing the Plaintiff. However, it was the Board, by a unanimous vote, which decided to fire the Plaintiff, not Mr. Shelton individually. Mr. Shelton individually did not even possess the authority to fire the Plaintiff. Therefore, the Plaintiff cannot prove that Mr. Shelton decided to fire the Plaintiff for exercising his right to free speech.

The court notes the Plaintiff's argument that Mr. Shelton is liable for the Board's decision to fire the Plaintiff because the Board merely "rubber-stamped" Mr. Shelton's recommendation of discharge. In support of this view, the Plaintiff cites Long v. Eastfield College, where the Fifth Circuit addressed an employer's vicarious liability for a discriminatory decision which the employer's president "rubber stamped." 88 F.3d 300, 307 (5th Cir. 1996). However, the reasoning of Long does not apply here because there is no vicarious liability under section 1983.

E.g., Coleman v. Houston Indep. Sch. Dist., 113 F.3d 528, 534 (5th Cir. 1997). Furthermore, in Long the Fifth Circuit focused on the liability of an employer. Here, on the other hand, the court is not focusing on the liability of an employer (the County), but the liability of one employee (Mr. Shelton) to another (the Plaintiff).

Conclusion

The court shall grant Mr. Shelton's motion for summary judgment and dismiss the Plaintiff's claims against Mr. Shelton. This action shall proceed to trial only against Grenada County. A separate order in accordance with this opinion shall issue this day.

This the ____ day of March 1999.

_____
United States District Judge

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ORDER GRANTING MOTION FOR SUMMARY JUDGMENT and DISMISSING CLAIMS AGAINST DEFENDANT SHELTON

Pursuant to an opinion issued today, it is hereby ORDERED that

(1) the Defendant Cecil Shelton's motion for summary judgment (docket entry 11) is GRANTED; and

(2) the Plaintiff's claims against the Defendant Cecil Shelton are DISMISSED.

SO ORDERED, this the ____ day of March 1999.

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United States District Judge